Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket Nos. 05-337, 06-122
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"),[1] by counsel, hereby replies to comments filed in response to the FCC's Public Notice announcing the request by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") for pro forma amendment of Eligible Telecommunications Carrier ("ETC") designations Verizon Wireless holds in Alabama, North Carolina and Virginia.[2]

I. INTRODUCTION

The handling of USF eligibility and payments in the wake of the merger between Verizon Wireless and ALLTEL Corporation and its partnerships ("ALLTEL") has been marked by an alarming lack of transparency. This has been made clear by a series of filings by multiple companies pointing out that Verizon Wireless's recent ex parte notices have lacked any substantive description of its meetings with Wireline Competition Bureau staff on post-merger issues apparently affecting numerous other ETCs. While these discussions have gone on largely

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[1] RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers. Several of RCA's members have received eligible telecommunications carrier ("ETC") status and are currently receiving high-cost support in numerous states, including Wisconsin, Nebraska, Oklahoma, Illinois, North Carolina, Wyoming, Montana, Texas, Iowa, Missouri, Kansas, Mississippi, Alabama, and Kentucky.

[2] *See Comment Sought on Petition of Cellco Partnership for Pro Forma Amendment of ETC Designations in Alabama, North Carolina, and Virginia*, WC Docket No. 09-197, FCC Public Notice, DA 09-2638 (rel. Dec. 30, 2009).

in secret, there have been major swings in high-cost support to the ALLTEL entities now controlled by Verizon Wireless, followed by significant adjustments to the support received by RCA members and other CETCs. RCA submits that it is time for the FCC to disclose the substance of its discussions with Verizon Wireless about these issues, and to invite public comment so that affected parties may provide input.

With respect to the instant petitions for pro forma amendment, the FCC and USAC should identify the ETC service areas that will be retained by Verizon Wireless and those that will be divested, respectively, so that other CETCs can properly assess the impact of the merger and the Interim CETC cap in the affected states. The FCC should also clarify that, in these and other states in which Verizon Wireless is required to divest certain properties as a condition of the merger, the divestiture areas will be subject to the support phase-down for all time periods up until the divestiture of those properties is complete.

II. DISCUSSION

A. The FCC and USAC Should Fully Explain the Reasons Behind the Support Adjustments Relating to the Merger.

CETCs operating in states affected by the Verizon Wireless/ALLTEL merger currently have very little information about high-cost support adjustments – often consisting of a major portion of their overall support – that have resulted from the merger.[3] RCA has previously commented on the lack of transparency of the cap calculations and corresponding support adjustments USAC now routinely performs.[4] The

[3] *See* Comments of Hayneville Fiber Transport, Inc. d/b/a Camellia Communications ("Camellia") at p. 3 (filed Jan. 29, 2010).

[4] *See* Comments of Rural Cellular Association, WC Docket No. 05-337 and CC Docket No. 96-45 at p. 8 (April 20, 2009) ("Actual, comprehensive CETC eligibility data is critical for CETCs to determine whether cap reductions are being calculated properly. Given that USAC already calculates the support owed to each CETC in a given quarter before it makes prior-period adjustments and cap reductions, USAC should not find it burdensome to disclose this

recent proliferation of cap-related adjustments made as a result of the Verizon Wireless-ALLTEL merger has turned this situation from bad to worse. As a result, RCA's members are left without the ability to confirm the accuracy of their payments. They are also unable to predict even the approximate amount of support they can expect to receive in future months, greatly hindering their ability to plan their network build-out and upgrades.

Beginning with the September disbursement paid in late October, CETCs in several states, including some RCA members, have experienced hundreds of thousands of dollars' worth of both positive and negative adjustments without any advance notice from USAC. When RCA's members sought an explanation, USAC explained that the adjustments resulted from retroactive adjustments to Verizon Wireless's support in connection with splitting out the divestiture areas. Whenever Verizon Wireless received a large retroactive payment going back several months, CETCs in the same state would correspondingly receive a negative adjustment due to the operation of the Interim CETC Cap. Despite several inquiries, USAC has declined to provide further information on the manner in which these adjustments to Verizon Wireless's support were calculated. Consequently, RCA's members have been unable to verify that USAC's cap reductions in a given disbursement month were correct.

Camellia Communications correctly notes that "there apparently is no public document that shows the total amount available for disbursement by state" and that "[t]ransparency in this process is sorely needed both to prevent undue discrimination and

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critical information to the public. Accordingly, RCA urges the Commission to instruct USAC to publish actual uncapped support amounts – net of prior-period adjustments – used in calculating the state cap factors and nationwide IAS adjustment factor for each quarter.")

mistakes."[5] RCA concurs and urges the FCC to direct USAC to publish detailed listings of the pre-cap amounts, by CETC, in each state for each month during which the cap has been in effect. The FCC should also direct USAC to provide a full accounting of the amount of each retroactive adjustment made to Verizon Wireless in the affected states, as well as each resulting cap-related adjustment to other CETCs that resulted from the adjustments to Verizon Wireless.

B. The FCC Should Direct Verizon Wireless to Provide a Full Description of Its Discussions With Wireline Competition Bureau Staff.

In recent months, Verizon Wireless has submitted multiple ex parte notices regarding meetings its representatives held with Wireline Competition Bureau staff on post-merger issues. Although the items discussed in those meetings affect numerous other ETCs, Verizon Wireless provided no details at all regarding what was discussed.[6] This lack of detail is striking and has been noted on multiple occasions in public filings by other CETCs and their representative associations.[7]

While these discussions have gone on largely in secret, there have been major swings in high-cost support to the ALLTEL entities now controlled by Verizon Wireless, followed by significant adjustments to the support received by RCA members and other CETCs. In response

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[5] Camellia Comments at p. 3.

[6] For example, in its notice of ex parte presentation filed on October 26, 2009, Verizon Wireless stated that those in attendance "discussed implementation of reductions to universal service support to Verizon Wireless pursuant to the Commission's November 10, 2008 order in the above-referenced proceeding." Nothing more was said on this subject in the letter.

[77] *See, e.g.,* letter from Caressa D. Bennett, Counsel for the Rural Telecommunications Group, to Marlene H. Dortch, Secretary of the Federal Communications Commission, filed in WT Docket No. 08-95, CC Docket No. 96-45, and WC Docket No. 05-337 (Oct. 29, 2009); letter from Phyllis A. Whitten, Counsel to Hayneville Fiber Transport, Inc. d/b/a Camellia Communications, to Marlene H. Dortch, filed in CC Docket No. 96-45, WC Docket No. 05-337, WC Docket No 06-122, WT Docket No. 08-95 and WT Docket No. 09-104 (Nov. 24, 2009).

to inquiries by RCA members, USAC has generally identified the support adjustments that are affected by the merger, but has declined to offer details, explaining that the FCC is currently deciding issues related to the interplay between the Interim CETC Cap and the merger. RCA members are thus left in the dark about the reasons behind the changes in the support to Verizon Wireless and how they relate to the adjustments to their own support. This obscure process greatly hampers the ability of RCA members to plan their network investments in fulfillment of their ETC obligations.

It would be an egregious abrogation of responsibility for the FCC to make decisions affecting numerous CETCs based on meetings behind closed doors with a merged entity representing "the largest wireless company in the United States" and "the largest recipient of the high-cost competitive ETC support."[8] RCA therefore submits that it is time for the FCC to disclose the substance of its discussions with Verizon Wireless about these issues, and to invite public comment so that affected parties may provide input.

C. The FCC Should Clarify that the Divestiture Areas Will Experience the Required Phase-Down in Support Until They Are Acquired by Another Entity.

In the merger order, the FCC adopted a phase-down of high-cost support as a condition of approving the merger. Specifically, the FCC referenced a commitment by Verizon Wireless "to accept a phase down of competitive [ETC] high cost support, ***for any properties which Verizon Wireless retains***, over a five year period following closing of the transaction."[9]

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[8] *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444, 17532 (para. 197) (2008) ("*Merger Order*") (emphasis added).

[9] *Id.* at 17531 (para. 196).

In adopting that commitment, the FCC held that Verizon Wireless's high-cost support would be phased down in the following manner:

- Support would be reduced 20 percent beginning 30 days following the closing of the transaction, or no later than December 31, 2008, whichever is earlier. If the transaction does not close prior to December 31, 2008, support would be reduced 20 percent beginning the day after consummation.
- Support would be reduced in equal 20 percent increments annually thereafter, such that all competitive ETC high cost support would be phased out five years after the closing of the transaction.

Currently, the divestiture areas are the subject of an application for transfer and assignment that is currently pending before the Commission. Meanwhile, those properties are being managed by the Verizon/ALLTEL Management Trust. Once they are transferred or assigned to another company, the areas will have to be accounted for in separate line count filings. This will enable USAC to calculate and pay the phased-down support to the areas retained by Verizon Wireless, and the full amount to the areas that are divested, to the extent they remain eligible.[10]

Even though Verizon Wireless still owns the divestiture areas, USAC has granted new Study Area Codes ("SACs") to enable Verizon Wireless to split out its line counts. In turn, Verizon Wireless has re-filed several calendar quarters' worth of filings dating back to the first quarter of 2009. USAC has apparently processed all of these retroactive filings, and a confusing array of positive and negative adjustments to the "new" and "old" SACs has ensued (see discussion in Section A, *supra*).

It is unclear – and full disclosure of the substance of Verizon Wireless's meetings with WCB staff may provide some clues – why new SACs were granted for areas that had not yet been divested. It makes even less sense that Verizon Wireless would need to file separate

[10] See discussion at pp. 7-8 *infra*, regarding the possibility that some of the areas to be retained or divested may lose eligibility for support due to the need for redefinition.

line counts under those SACs going all the way back to January 2008. As adopted in the *Merger Order*, the phase-down applies to "any properties that Verizon Wireless retains." To date, the divestiture properties remain under the control of Verizon Wireless. Those properties will be freed from the phase-down provisions once Verizon Wireless no longer "retains" them.

Payment of full support in the divestiture areas prior to divestiture would violate the *Merger Order*. The phase-down was to begin immediately upon the closing of the merger, which occurred on December 31, 2008. Verizon Wireless was required to divest itself of those areas as a condition of approving the merger, and this has not yet occurred. Verizon Wireless therefore "retains" those areas. This delay in divesting support does not trump the requirement under the Merger Order that support be phased down in "any" areas retained by Verizon Wireless.

Moreover, payment of full support in the divestiture areas prior to their disposition would unjustly enrich Verizon Wireless at the expense of other CETCs that were not involved in the merger. Verizon Wireless should not be allowed to experience a windfall of support solely by virtue of the delay in fulfilling its divestiture obligations.

Accordingly, the FCC should clarify that the areas to be divested under the Merger Order are subject to the phase-down from the date of closing on December 31, 2008, through the closing of the assignment or transfer of those properties from Verizon Wireless to another company. If support has not been phased down in those areas, the FCC should direct USAC to effectuate the phase-down promptly for all periods retroactive to the closing date.

D. The FCC and USAC Should Identify the ETC Service Areas to Be Retained by Verizon Wireless vs. Those to Be Divested.

Some RCA members are ETCs in states where Verizon Wireless is required to divest itself of some properties as a condition of the merger order. The areas Verizon Wireless retains will receive support that is stepped down by 20% per year. The divested areas, once disposed of, will receive support that is not subject to the phase-down, to the extent they remain eligible for support. Among the issues before the FCC is the request for review by Corr Wireless Communications, LLC ("Corr") of USAC's decision to prevent the phase-down from resulting in additional cap room that would potentially ameliorate the impact of the Interim CETC Cap on other CETCs.[11] If Corr's request is granted, the phase-down in the areas to be retained by Verizon Wireless will mitigate the reductions in support to some RCA members.

However, RCA's members are currently unable to forecast the extent of this potential mitigation. One of the many areas in which basic information has been woefully lacking is the makeup of the areas Verizon Wireless will retain and those that are subject to the divestiture provisions of the merger order. The merger order itself did not set forth any description of the wire centers or study areas that make up the areas to be divested, nor has USAC made public any such listing. The annual ETC reports filed by ALLTEL Communications for Alabama, North Carolina, and Virginia on October 1, 2009, purported to cover both the divestiture areas and the areas to be retained by the merged entity – yet the exhibits purportedly describing the respective areas were submitted under seal in their entirety.

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[11] *See* Request for Review by Corr Wireless Communications, LLC, of Decision of Universal Service Administrator, CC Docket No. 96-45, WC Docket No. 06-122 (Mar. 25, 2009); *Public Notice*, DA 09-805 (rel. April 9, 2009).

The lack of information about the areas to be retained vs. those to be divested raises the additional concern that the transfer of some areas will result in areas that may lose their eligibility at least temporarily. For example, if the required divestiture results in Verizon Wireless retaining an area that only partially covers a rural ILEC study area, then both Verizon Wireless and the company acquiring the divested areas will lose their eligibility for funding in that ILEC area unless and until the required areas are redefined under the federal-state concurrence process provided for in the FCC's rules. Neither the petitions at issue here nor the publicly available portions of the ALLTEL annual ETC reports provide any clue as to whether any areas will lose eligibility due to the need for redefinition.

To ensure that sufficient information is available for other CETCs to determine the effects of the divestiture and the phase-down, the FCC and USAC should release public information identifying, in detail, the ETC service areas that are to be retained by Verizon Wireless and those that are to be divested.

III. CONCLUSION

RCA urges the Commission to provide transparency in the process flowing from the Verizon Wireless/ALLTEL merger as set forth above.

Respectfully submitted,

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February 16, 2010